IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.3644 OF 2001

Mr.Vishnu R.Maheshwari Prop.
V.R.Maheshwari & Co .. Plaintiff

versus

Mr.Nissar Yusuf Khan Prop.
M/s Mistry & Co .. Defendant

Ms.Mamta S.Shah for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 10th January 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendant when called. By an order dated 18th July, 2003 passed in Summons for Judgment No.450 of 2002 the defendant was granted conditional leave to defend the suit subject to his depositing in court a sum of Rs.3,67,694/- within a period of 8 weeks. The defendant has not deposited the said

amount within the stipulated time. A certificate of non- deposit issued by the Master and Assistant Prothonotary dated 6th January, 2004 is filed on record. Hence, suit is set down for hearing under Rule 224 of the Bombay High Court (Original Side) Rules, 1980.

2. In view of the fact that the defendant has failed to comply with the direction granting him conditional leave, the plaintiff is entitled to a decree under sub-clause (b) of clause 6 of Rule 3 of Order XXXVII of the Code of Civil Procedure. Plaintiff has filed on record the original documents along with a list. The documents are taken on record and marked Exhibit A (collectively). The documents contain office copies of the bills, delivery challans, office copy of the notice and original cheques issued by the defendant all of which were dishonoured. Hence, the plaintiff is entitled to a decree. Only question is of interest prior to the date of suit. Plaintiff is entitled to contractual interest upto the date of suit. Grant of future interest is in the discretion of the court. Plaintiff has claimed 30 % which according to to the present prevailing market rate is excessive. In the circumstances, I am inclined to allow 6 % interest

from the date of suit till payment.

3. Hence, suit is decreed as under:

> " The defendant shall pay to the plaintiff a sum of Rs.6,26,087/- together with interest thereon at 6 % p.a. from the date of the suit till payment and all costs of the suit.

4. Certified copy is expedited.

D.G.KARNIK, J